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4 MICHAEL WALTER BERGER,
5 Plaintiff,
6 v.
7 JEFFREY BEARD,
8 Defendant.

9 Case No. 15-cv-0681-TEH
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12 ORDER DENYING MOTION TO
13 APPOINT AS NEXT FRIEND
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15 Re: Dkt. No. 26
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21 Plaintiff proceeds with a civil rights action. Defendant
22 filed a motion for summary judgment and the Court is awaiting the
23 opposition from Plaintiff. Plaintiff was formerly a state
24 prisoner but has been released. While in prison he was being
25 aided by another inmate. That inmate, who is still incarcerated
at Correctional Training Facility-Soledad, seeks permission to be
appointed as Plaintiff's "next friend" and litigate this case on
Plaintiff's behalf.

In Whitmore v. Arkansas, the Supreme Court stated that
"next friend" standing is by no means granted automatically to
whomever seeks to pursue an action on behalf of another." Whitmore, 495 U.S. 149, 163 (1990). To establish next friend
standing, a putative next friend must show "(1) that the
petitioner is unable to litigate his own cause due to mental
incapacity, lack of access to court, or other similar disability;
and (2) the next friend has some significant relationship with,

1 and is truly dedicated to the best interests of, the petitioner."

2 Coalition of Clergy, Lawyers and Professors v. Bush, 310 F.3d

3 1153, 1159-60 (9th Cir. 2002). The burden is on the putative next

4 friend to clearly establish the propriety of his or her status.

5 Whitmore, 495 U.S. at 164.

6 The inmate argues that he aided Plaintiff while in prison
7 and should continue. The inmate has failed to show that
8 Plaintiff is unable to litigate this case and that the inmate has
9 some significant relationship with Plaintiff.¹ The inmate has not
10 described how as a prisoner he will have more court access than
11 Plaintiff who is not incarcerated. The motion (Docket No. 26) is
12 DENIED. Plaintiff is reminded that he must file the opposition
13 to summary judgment by January 25, 2016.

14 This order terminates Docket No. 26.

15 IT IS SO ORDERED.

16 Dated: 01/16/2016



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18 THELTON E. HENDERSON
United States District Judge

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28 ¹The filing sent to the Court contains a declaration for Plaintiff
that was prepared by the inmate but was not signed by Plaintiff.